

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Michael A. Naple, Executive Fellow
Hyla P. Wagner, Senior Commission Counsel, Legal Division

Subject: Prenotice Discussion of Proposed Regulation 18466 – Online Reporting of Contributions and Expenditures for State Ballot Measures

Date: March 26, 2007

Proposed Commission Action: Approve for adoption in June new Regulation 18466 on ballot measure reporting.

Reason for Proposal: Regulation 18466 is in response to new legislation (AB 1759 Umberg) adding section 84204.5 to the Act. Section 84204.5 (attached) requires a committee to file online with the Secretary of State within 10 days each time it makes contributions or independent expenditures of \$5,000 or more to support or oppose the qualification or passage of a single state ballot measure. According to a Senate committee analysis, the legislation intends to close a loophole that allows ballot measure proponents to delay disclosing their financial supporters by funding a ballot measure campaign through a general purpose committee.¹ General purpose committees may be filing semi-annually and may have no immediate reporting requirements preceding a state ballot measure election.

Summary of Regulation: Regulation 18466 (attached) answers three questions that Technical Assistance has been asked about the new reporting.

1. In subdivisions (a)(1) and (2), the regulation specifies the reporting requirement of Section 84204.5 applies when a donor committee makes contributions of \$5,000 or more to a primarily formed committee or a general purpose ballot measure committee supporting or opposing one or more state ballot measure(s).
2. Second, in subdivisions (a)(1) and (2), the regulation clarifies the disclosure requirement applies when contributions totaling \$5,000 or more are made to a committee that is supporting multiple state ballot measures. Section 84204.5 requires a committee

¹ The legislative analysis discusses the example of the Small Business Action Committee (SBAC). In 2005, the committee made hundreds of thousands of dollars in campaign contributions to qualify an initiative aimed at limiting the participation of unions in state politics. The measure was placed on the November ballot and even though SBAC provided the vast majority of funding, it did not have to be immediately reported. This is in contrast to a committee primarily formed to support or oppose a state ballot measure, required to file within 10 days of receiving a contribution of \$5,000 or more (Section 85309(d)).

with electronic filing obligations to file online each time it makes contributions or independent expenditures totaling \$5,000 or more “to support or oppose the qualification or passage of a single state ballot measure.” Because the statute refers to a *single state ballot measure*, there is an issue of whether the disclosure requirement applies if a donor committee gives to a committee primarily formed to support or oppose *two or more* ballot measures.

Committees are frequently formed to support or oppose pairs of related ballot measures. Recognizing this, the definition of primarily formed committee in Section 82047.5 includes a committee formed or existing primarily to support or oppose “two or more measures being voted upon in the same city, county, multicounty, or state election.” Here, the intent of Section 84204.5 is to provide increased disclosure for contributions to state ballot measures. Applying the disclosure requirement when a donor committee gives \$20,000 to a committee primarily formed to support one state measure, but not when the same committee gives \$20,000 to a committee primarily formed to support two state measures. This is contrary to the purpose of the statute though a ballot measure committee has been formed to support or oppose two measures, the donor committee is still making a contribution to support a state ballot measure, and the donor committee’s source of funding should be disclosed under Section 84204.5.²

3. Third, subdivision (b) of the regulation exempts a committee from duplicative reporting. The statute itself has two exceptions when the additional ballot measure disclosure is not required.³ Subdivision (b) states the Section 84204.5 disclosure is not required when a primarily formed committee makes a contribution to another committee that is primarily formed for the same state ballot measure or a measure on the same ballot.

Recommendation: Staff recommends that the Commission approve the proposed regulation 18466 for adoption at its June meeting.

² The legislative history supports this interpretation. AB 1759 was vetoed in its original form (AB 938) because the Governor thought the disclosure threshold of \$10,000 in AB 938 was too high; the disclosure threshold of AB 1759 was lowered to \$5,000. The bill analysis for AB 1759 quotes the Governor’s veto message for AB 938: “I support requiring a general purpose committee that makes contributions to other committees that support or oppose the qualification of a ballot measure, to disclose those contributions within 10 business days. In fact, my general purpose committee that helped qualify Propositions 74, 76, and 77 voluntarily complied with the online reporting rules found in Government Code section 84309.”

³ Section 84204.5(b) specifies that reports required by the section are not required to be filed by a primarily formed committee for expenditures made on behalf of the ballot measure(s) for which it is formed; the committee is already reporting these expenditures. Section 84204.5(c) states that independent expenditures already disclosed by a committee in late reports (Section 84204) or election cycle reporting (Section 85500) are not required to be disclosed.